

E. MARTIN ESTRADA
United States Attorney
DAVID T. RYAN
Assistant United States Attorney
Chief, National Security Division
KATHRYNNE N. SEIDEN (Cal. Bar No. 310902)
Assistant United States Attorney
Deputy Chief, Terrorism and Export Crimes Section
ANNA P. BOYLAN (Cal. Bar No. 322791)
Assistant United States Attorney
Terrorism and Export Crimes Section
1500 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-0631/2170
Facsimile: (213) 894-0141
E-mail: kathrynne.seiden@usdoj.gov
anna.boylan@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT BOMAN,

Defendant.

No. CR 2:18-759(A)-JLS-2

GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION IN LIMINE TO
PRECLUDE INTRODUCTION OF TESTIMONY
BY DR. PETE SIMI AND SOCIAL MEDIA
EVIDENCE

Hearing Date: February 7, 2025
Hearing Time: 9:30 a.m.
Location: Courtroom of the
Hon. Josephine L.
Staton

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorneys Kathrynne N. Seiden and Anna P. Boylan, hereby files its Opposition to defendant Robert Boman's ("defendant's") motion in limine to preclude introduction of testimony by Dr. Pete Simi and social media evidence.

1 This opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: January 17, 2024

Respectfully submitted,

5 E. MARTIN ESTRADA
6 United States Attorney

7 DAVID T. RYAN
8 Assistant United States Attorney
 Chief, National Security Division

9 /s/ Kathrynne Seiden

10 KATHRYNNE N. SEIDEN

11 ANNA P. BOYLAN

Assistant United States Attorneys

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA
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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	2
A.	Factual Background.....	2
1.	Defendant's Participation in the Rise Above Movement.....	2
2.	Defendant's Social Media Posts and Communications....	3
B.	Defendant's Prior Change-of-Plea Hearing.....	3
C.	The Government's Expert Disclosure.....	4
1.	Dr. Simi's Proffered Opinions.....	4
2.	The Basis for Dr. Simi's Opinions.....	6
3.	Dr. Simi's Qualifications.....	6
III.	THE SOCIAL MEDIA EVIDENCE AND DR. SIMI'S TESTIMONY ARE RELEVANT AND HIGHLY PROBATIVE OF THE CHARGED CONDUCT.....	8
IV.	THE SOCIAL MEDIA EVIDENCE IS NOT PROPENSITY EVIDENCE.....	12
V.	DR. SIMI'S TESTIMONY IS HELPFUL, RELIABLE, AND BASED ON SUFFICIENT FACTS AND DATA.....	15
VI.	THE COURT NEED NOT HOLD A DAUBERT HEARING.....	18
VII.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Page (s)

Cases

<u>Kumho Tire Co., Ltd. v. Carmichael</u> , 526 U.S. 137 (1999)	15
<u>United States v. Quintero</u> , 2022 WL 4021744 (C.D. Cal. Aug. 30, 2022)	19
<u>United States v. Alatorre</u> , 222 F.3d 1098 (9th Cir. 2000)	19
<u>United States v. Cervantes</u> , 2016 WL 491599 (N.D. Cal. Feb. 9, 2016)	17, 18
<u>United States v. Cutler</u> , 806 F.2d 933 (9th Cir. 1986)	10
<u>United States v. DeGeorge</u> , 380 F.3d 1203 (9th Cir. 2004)	14
<u>United States v. Finley</u> , 301 F.3d 1000 (9th Cir. 2002)	15, 18
<u>United States v. Hunt</u> , 534 F.Supp.3d 233 (E.D.N.Y. Apr. 15, 2021)	11, 12
<u>United States v. Jawara</u> , 474 F.3d 565 (9th Cir. 2007)	18
<u>United States v. Mejia</u> , 545 F.3d 179 (2d Cir. 2008)	17
<u>United States v. Ramirez-Jiminez</u> , 967 F.2d 1321 (9th Cir. 1992)	13, 14
<u>United States v. Rundo</u> , 990 F.3d 709 (9th Cir. 2021)	9
<u>United States v. Santiago</u> , 46 F.3d 885 (9th Cir. 1995)	14
<u>United States v. Skillman</u> , 922 F.2d 1370 (9th Cir. 1990)	11
<u>United States v. Vera</u> , 770 F.3d 1232 (9th Cir. 2014)	18

1	<u>United States v. Winslow,</u>	
2	962 F.2d 845 (9th Cir. 1992)	10

3 **Statutes**

4	18 U.S.C. § 2101.....	9
5	18 U.S.C. § 371.....	2

6 **Rules**

7	Fed. R. Evid. 401.....	8
8	Fed. R. Evid. 403.....	8
9	Fed. R. Evid. 404.....	12, 13, 14
10	Fed. R. Evid. 702.....	15
11	Fed R. Evid. 402.....	8

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant is charged with intentionally rioting and conspiring to riot with fellow members of what the government contends was a violent white supremacist organization. The parties do not dispute that defendant engaged in physical confrontations at various public protests during the summer of 2017. Thus, the key issue for the jury to determine will be defendant's intent in doing so. Apart from defendant's conduct at the riots, the best evidence the jury will have with which to decipher defendant's intent are his own words and beliefs, which the government plans to admit in the form of messages and posts defendant shared on his Facebook account.

Because most of those posts and messages include references, symbols, and imagery whose meaning may not be obvious to a layperson, the government has noticed an expert on the white supremacy movement who can contextualize defendant's statements within that movement. The government's proposed expert will help the jury in determining defendant's intent by explaining that his evident belief system conformed to the violent extremism that characterizes the white supremacy movement. Because that expert's views are based on decades of fieldwork and academic study and are highly probative of the key issue the jury must decide, the Court should deny defendant's motion to exclude his testimony without a Daubert hearing. The Court should similarly deny defendant's motion to preclude the key evidence of the major issue in this case: defendant's own social media posts and messages.

1 **II. BACKGROUND**

2 **A. Factual Background**

3 1. Defendant's Participation in the Rise Above Movement

4 The first superseding indictment ("FSI") charges that beginning
5 in or around March 2017 and continuing until on or about May 2018,
6 defendant conspired with Robert Rundo ("Rundo"), Tyler Laube
7 ("Laube"), and others to riot and did riot, in violation of 18 U.S.C.
8 §§ 371 and 2101. (Dkt. 209 ¶ 5.) Using text messages and the
9 internet to coordinate combat training and their attendance at
10 various rallies throughout the country, defendant and his co-
11 conspirators then traveled to those rallies to engage in violence
12 with individuals they identified as holding opposing political views.
13 (Id. ¶ 6.) At the rallies, defendant and his co-conspirators engaged
14 in violent altercations. (Id.) Afterwards, they used the internet
15 to share videos and photographs of themselves and each other
16 committing acts of violence to recruit more people to engage in
17 violence at future events. (Id.) The FSI charges that defendant and
18 his co-conspirators did this all as members of RAM, a combat-ready,
19 militant white nationalist and supremacy movement. (Id. ¶ 2.)

20 Defendant personally participated in two of those rallies, which
21 occurred in Huntington Beach, California in March 2017 and in
22 Berkeley, California in April 2017. (Id. ¶ 7.) His co-conspirators
23 participated in additional rallies during the charged timeframe which
24 defendant did not attend, including rallies in San Bernardino,
25 California in June 2017 and Charlottesville, Virginia in August 2017.
26 (Id.) At each of the four rallies described in the FSI, defendant
27 and/or his co-conspirators committed violent assaults against
28

1 counter-protestors or others who they believed opposed RAM's
2 ideology.

3 2. Defendant's Social Media Posts and Communications

4 During the period of the charged conspiracy, defendant used his
5 Facebook account to brag about his violence at the rallies he
6 attended and to promulgate his white supremacist ideology. Many of
7 those posts and messages facially relate to the charged conduct; for
8 example, in March 2017, just after the Huntington Beach rally,
9 defendant posted a link to an article titled "Trumpenkriegers
10 Physically Remove Antifa Homos in Huntington Beach" along with the
11 comment "we did it fam." But defendant also made repeated statements
12 reflecting his antisemitic and white supremacist viewpoints: for
13 example, defendant's posts and messages contain repeated references
14 to the "alt-reich," "hail victory," Holocaust denial, "back of the
15 oven," "Dagoyim know," "leftist cucks," "red pilling," and the
16 crusades. In addition to his explicit statements repeating or
17 discussing the above terms, defendant also shared various memes
18 reflective of his ideology, including illustrated images referencing
19 lynching and antisemitic tropes. Defendant posted these and other
20 similar images on Facebook between March and August of 2017; in other
21 words, beginning around the time of the Huntington Beach rally and
22 continuing through the approximate time of the Charlottesville rally.

23 **B. Defendant's Prior Change-of-Plea Hearing**

24 In February 2023, defendant signed a plea agreement in which he
25 admitted that he was a member of RAM and that he and his co-
26 conspirators agreed to attend rallies with the intent to commit acts
27 of violence in furtherance of rioting. (Dkt. 216 ¶ 10.) But at his
28 change-of-plea hearing, defendant denied that he attended the rallies

1 with "a mind to fight or [to] have an altercation," asserted that he
2 and his co-conspirators went to the rallies to protest and to act as
3 "security for the speakers," and painted his violence at the rallies
4 alternatively as self-defense and as motivated by his desire to
5 defend an 18-year-old minority being attacked by counter-protestors.
6 (Dkt. 238 at 26-29.) Ultimately, defendant opted not to go through
7 with his guilty plea. His trial is set for February 18, 2025.

8 **C. The Government's Expert Disclosure**

9 On December 19, 2024, the parties met and conferred regarding,
10 among other things, the government's anticipated expert testimony.
11 On January 2, 2025, the government provided the written notice
12 attached as Exhibit A to defendant's motion. (Dkt. 465-2.)

13 **1. Dr. Simi's Proffered Opinions**

14 The government's 20-page notice outlines at length Dr. Pete
15 Simi's anticipated testimony. Notably, the government anticipates
16 that Dr. Simi will give the jury an overview of the white supremacist
17 movement and how violence is inextricably intertwined with that
18 movement, which is premised on the notion that non-whites and "race
19 traitors" like Antifa pose an existential threat to the white race
20 that can only be resolved through violence. (Id. at 8-14.) Dr. Simi
21 will explain how the ideas embedded into the culture of the movement,
22 including the idea that threats are everywhere, prime participants to
23 engage in violence and imbue participants with the sense that
24 violence is justifiable self-defense. (Id. at 11.) He will further
25 opine that public confrontations provide an opportunity for members
26 of the white supremacist movement to trigger their enemies and ignite
27 large-scale conflicts that members of the movement see as inevitable.
28 (Id. at 10.) Dr. Simi will also explain to the jury how participants

1 in the modern white supremacist movement use "double-speak," "front-
2 stage" and "back-stage" behavior, and social media to outwardly
3 rebrand their violent views as acceptable forms of politics in order
4 to neutralize public stigma, while privately reinforcing norms of
5 violence through exposure to hateful propaganda. (Id. at 4-7.)

6 Dr. Simi will then explain to the jury that based on his review
7 of open source materials covering RAM's presence at the charged
8 rallies and RAM's social media accounts, public recruitment videos,
9 and its members' communications, RAM was not simply a fitness-
10 oriented fraternal order, but promoted through its propaganda,
11 attendance at rallies, and on and offline communications a white
12 supremacist agenda filtered through the lens of a warrior motif,
13 reimagining white supremacy as something more fashionable to young
14 adults. (Id. at 14-16.) Dr. Simi will explain to the jury the
15 historical references and meanings conveyed by the various messages,
16 symbols, and gestures displayed by RAM members (including defendant)
17 at the charged rallies and will further explain how those references
18 are hallmarks of the white supremacy movement. (Dkt. 465-2 at 14-
19 16.) And Dr. Simi will opine that RAM members not only subscribed to
20 a violent ideology, but also used their own violence at these rallies
21 to market themselves to the rest of the white supremacist movement.
22 (Id. at 16.)

23 Finally, Dr. Simi will explain that defendant's Facebook account
24 and messages with his co-conspirators, other white supremacists, and
25 members of the public reflect his immersion into white supremacist
26 culture and are consistent with him subscribing to a violent white
27 supremacist ideology. (Id. at 17.) In particular, Dr. Simi will
28 explain that defendant's various references to Nazi Germany, the

1 crusades, white genocide, and white supremacist outlets; his displays
2 of antisemitism and posts celebrating his own violence at the charged
3 protests; and his references to terms which may seem opaque to a jury
4 (such as being "red pillled" or "cucked") all make clear that
5 defendant held a violent extremist ideology which is compatible with
6 having been immersed in the white supremacist movement and which is
7 compatible with having committed violence at the public events he
8 attended in furtherance of that movement.

9 2. The Basis for Dr. Simi's Opinions

10 Dr. Simi's opinions are based on his training and experience,
11 detailed below, as well as his review and observance of audio, video,
12 photographic, text, and social media evidence from RAM's own
13 Instagram and Twitter accounts and training videos, defendant's own
14 Facebook account, and communications between RAM members. (Id. at
15 19-20.) Dr. Simi has reviewed these materials through open sources,
16 evidence provided to him in this case, and through his engagement and
17 consultation on related court proceedings involving RAM, including a
18 federal civil matter related to the Charlottesville protest, in which
19 he testified. (Id.)

20 3. Dr. Simi's Qualifications

21 As explained more fully in the government's disclosure, Dr. Simi
22 has studied extremist groups and their violence for more than 25
23 years and has conducted extensive ethnographic fieldwork,¹ including
24 firsthand interviews with more than 200 current and former members of
25 domestic extremist groups from 27 states. (Dkt. 465-2 at 20.) His
26

27 ¹ Ethnography can be defined as the systematic study of human
28 groups and human culture; it is a research strategy employed by
social scientists such as anthropologists and sociologists to collect
primary data through intensive interviews and observation.

1 research has been used in the Federal Bureau of Investigation
2 ("FBI")'s National Training Academy to highlight the activity of
3 white supremacist groups and has been relied on by the United States
4 Congress and various federal and state law enforcement agencies for
5 training. (Id.)

6 Attached to the government's disclosure was Dr. Simi's 28-page
7 curriculum vitae, which further documents Dr. Simi's extensive
8 experience and expertise in white supremacist groups and their
9 culture. (Id. at 24-51.) Dr. Simi has various relevant degrees,
10 including: a B.A. in Social Science; an M.A. in Sociology, for which
11 he wrote his thesis on white supremacy; and a Ph.D. in Sociology, for
12 which he produced a dissertation on skinhead subculture in Los
13 Angeles. (Id. at 24.) His decades in academia have included (but
14 are not limited to) tenures as the Director of Radicalization and
15 Violent Groups Research at the University of Nebraska, a visiting
16 professor at the University of Oslo's Center for Research on
17 Extremism, a member of the Executive Committee for National
18 Counterterrorism at the University of Nebraska, Omaha, and a
19 Professor in the Department of Sociology at Chapman University.
20 (Id.) He has earned multiple certifications from the FBI's
21 Behavioral Science Unit, including as part of a working group on
22 radicalization and street gangs. (Id.) His published work is too
23 extensive to relay here, but includes books on extremist white
24 supremacy and the white power movement; nearly 40 peer-reviewed
25 articles on topics relating to violence and white supremacist
26 culture, including "How Threat Mobilizes the Resurgence and
27 Persistence of U.S. White Supremacist Activism," "A Constellation
28 Approach to Understanding Extremist White Supremacy," "More Than a

1 Joke: White Supremacist Humor as a Daily Form of Resistance," "On the
2 Permissibility of Homicidal Violence: Perspectives from Former US
3 White Supremacists," "The Culture of Violent Talk: An Interpretive
4 Approach," and "Understanding the Micro-Situational Dynamics of White
5 Supremacist Violence in the United States"; and more than 50 book
6 chapters and technical publications, including on neo-nazis and other
7 facets of the white supremacist movement, the alt-right, and violent
8 extremism. (Dkt. 465-2 at 25-31.) His research on extremism has
9 been funded by more than \$5 million in grants, contracts, and
10 fellowships, and he has consulted as a legal expert in dozens of
11 matters, including testifying in a federal civil case arising from
12 the Charlottesville protest charged as part of the instant
13 conspiracy. (Id. at 34-46.)

14 **III. THE SOCIAL MEDIA EVIDENCE AND DR. SIMI'S TESTIMONY ARE RELEVANT**
15 **AND HIGHLY PROBATIVE OF THE CHARGED CONDUCT**

16 The Court should admit defendant's social media posts and Dr.
17 Simi's testimony explaining those posts because that evidence is
18 relevant and highly probative of the primary determination the jury
19 will be asked to make. "[A]ll relevant evidence is admissible." Fed.
20 R. Evid. 402. Evidence is relevant if it has a "tendency to make the
21 existence of any fact that is of consequence to the determination of
22 the action more probable or less probable." Fed. R. Evid. 401.
23 Relevant evidence should be admitted unless its "probative value is
24 substantially outweighed by the danger of unfair prejudice, confusing
25 the issues, misleading the jury, undue delay, wasting time, or
26 needlessly presenting cumulative evidence." Fed. R. Evid. 403.

27 Here, the jury will need to decide whether defendant used a
28 facility of interstate commerce with the intent to incite,
participate in, or commit an act of violence in furtherance of a

1 riot, and whether he committed an overt for the purpose of rioting.
2 See 18 U.S.C. § 2101; see also United States v. Rundo, 990 F.3d 709,
3 720-21 (9th Cir. 2021). Based on the plain language of the statute,
4 defendant's intent is paramount to that determination. The jury
5 cannot be expected to discern defendant's intent in a vacuum; rather,
6 his own words during the relevant timeframe provide critical insight
7 into what he was thinking when he attended politically charged
8 rallies and repeatedly engaged in physical altercations with
9 attendees holding opposing viewpoints.

10 Dr. Simi's testimony further underscores why defendant's posts
11 and messages are relevant because it helps to contextualize
12 references whose connection to the charged conduct may not be obvious
13 to a layperson. For example, defendant's antisemitism may appear to
14 the average person to bear little relation to his conduct at
15 Huntington Beach or Berkeley, but Dr. Simi will explain that those
16 views are embedded in the white supremacy movement and motivate its
17 members to engage in violence. Specifically, Dr. Simi will explain
18 that white supremacists believe in a Jewish conspiracy to control
19 world affairs and that to a white supremacist, such a conspiracy
20 poses an existential threat to the white race. In Dr. Simi's
21 opinion, those beliefs lead white supremacists to view acts of
22 intentional violence against their political opponents as necessary
23 and justifiable. That testimony is highly relevant to whether
24 defendant intentionally engaged in violence at the protests he
25 attended, or rather, as he has already claimed, attended the rallies
26 without any intention to engage in physical altercations and only did
27 so because he saw a minority being attacked.

1 The proffered evidence is also relevant because it helps explain
2 the conspiracy defendant is charged with joining. Specifically,
3 defendant is charged with having agreed to riot with other members of
4 a particular group. Establishing that the group had shared goals
5 based on their unifying ideals and that defendant himself held those
6 ideals is highly probative of whether he entered into an agreement to
7 commit particular acts in furtherance of the group's agenda. See
8 United States v. Winslow, 962 F.2d 845, 850 (9th Cir. 1992)
9 (admitting testimony on Aryan Nation as relevant to bombing of gay
10 bar by group members); United States v. Cutler, 806 F.2d 933, 936
11 (9th Cir. 1986) (admitting evidence of affiliation with Aryan Nation
12 to show the defendant's motive to hire hit man to kill persons who
13 might testify against the group).

14 Defendant claims that the social media evidence and Dr. Simi's
15 testimony should be excluded as irrelevant because they concern his
16 motivation to commit the charged offenses, which defendant claims is
17 "irrelevant to the issue of whether the defendant actually committed
18 the alleged offenses." (Def. Mot., Dkt. 465 ("Mot.") at 4.) The
19 proposition that a defendant's motive to commit a crime is irrelevant
20 to whether he did so intentionally flies in the face of common sense
21 and the established law of this Circuit. See Cutler, 806 F.2d at
22 936. To the extent defendant's posts make clear that he had an
23 actual motive to engage in physical altercations, it makes it
24 significantly more likely that his conduct was intentional. The
25 posts are therefore highly relevant.

26 Finally, defendant claims that his social media posts should be
27 excluded under Rule 403 because they are prejudicial and risk
28 confusing and misleading the jury. (Mot. at 6.) However, as the

1 Ninth Circuit has made clear, prejudice alone is insufficient to
2 preclude the admission of otherwise relevant evidence; a district
3 court only has discretion to exclude relevant evidence if its
4 probative value is substantially outweighed by the danger of unfair
5 prejudice. United States v. Skillman, 922 F.2d 1370, 1374 (9th Cir.
6 1990). Evidence establishing racial animus is not unfairly
7 prejudicial where that animus is relevant to defendant's motivation
8 for engaging in the charged conduct. See id. (admitting testimony,
9 over Rule 403 objection, that the defendant asked to attend a
10 "skinhead" picnic as relevant on issue of racial animus in civil
11 rights case).

12 Defendant relies exclusively on an out-of-district case in
13 which the Eastern District of New York excluded certain evidence as
14 irrelevant and unfairly prejudicial under Rule 403, but that case
15 supports the government's position. There, the defendant was
16 indicted for threatening to assault and murder members of the U.S.
17 Congress. United States v. Hunt, 534 F.Supp.3d 233, 239 (E.D.N.Y.
18 Apr. 15, 2021). The court excluded text exchanges with the
19 defendant's cousin and father reflecting that he was a violent
20 person, but which otherwise had no relationship, temporally or
21 substantively, to the statements or events at issue in the case. Id.
22 at 252-53. But the court admitted significant evidence reflecting
23 the defendant's antisemitic and white supremacist beliefs. Although
24 the court acknowledged that evidence about those beliefs could be
25 unduly prejudicial if it "extend[ed] beyond explaining the references
26 in his alleged threats," id. at 247-48, it nonetheless admitted the
27 majority of the government's proffered evidence reflecting them,
28 including: antisemitic text messages around the time of the election;

1 references to the writings of Adolf Hitler; portions of a manifesto
2 making references to "88", "14," and other anti-Semitic symbology;
3 and the defendant's browser history reflecting visits to a website
4 used to spread white supremacist and antisemitic propaganda. Id. at
5 248-49. The court found that the evidence about the defendant's
6 white supremacist and antisemitic beliefs was "probative of his
7 intent and knowledge" and could "bear on whether [the defendant]
8 wished to retaliate against public officials." Id.

9 Here, like in Hunt, the evidence the government seeks to admit
10 is highly probative of his intent and of whether he had a motivation
11 to riot against those he viewed as his political enemies. None of
12 the evidence the government seeks to admit is unnecessarily gruesome,
13 graphic, or otherwise "unfairly" prejudicial; rather, the evidence
14 consists of cursory phrases, symbols, or illustrated internet memes
15 which are highly probative of defendant's state of mind during the
16 charged conspiracy. The Court should not exclude evidence that can
17 give the jury an accurate sense of defendant's ideology, and thus his
18 intent in attending highly charged political rallies. To do so would
19 be to mislead the jury.

20 **IV. THE SOCIAL MEDIA EVIDENCE IS NOT PROPENSITY EVIDENCE**

21 Defendant further claims that the evidence should be excluded as
22 impermissible character evidence under Rule 404(a) (Dkt. 465 at 4),
23 which provides that evidence of a person's "character or character
24 trait is not admissible to prove that on a particular occasion the
25 person acted in accordance with the character or trait." Fed. R.
26 Evid. 404(a)(1). Defendant's argument would hold weight if, for
27 example, the government wanted to call a witness to testify that
28 defendant has a reputation as a violent person, and such evidence

1 were only relevant to prove that he acted violently during the
2 charged rallies. That is not the case here. Defendant's own words
3 and postings during the charged conspiracy are not being offered as
4 evidence of defendant's character trait, but as evidence of his
5 motive and intent to riot. Moreover, some of the posts are also
6 admissible because they are themselves instances of defendant using a
7 facility of interstate commerce with the intent to incite a riot. In
8 other words, defendant's posts and messages immediately preceding the
9 Berkeley rally are not only relevant because they shed light on his
10 mental state once he was physically present at the Berkeley rally,
11 but also because they are direct examples of defendant committing the
12 crime with which he is charged.

13 Defendant also points to Rule 404(b) as precluding admission of
14 his social media posts, but that rule does not help him, either.
15 Under Rule 404(b), evidence of any other crime, wrong, or act is not
16 admissible to prove a person's character in order to show that on a
17 particular occasion, the person acted in accordance with that
18 character. Fed. R. Evid. 404(b)(1). But "evidence should not be
19 treated as other crime evidence when the evidence concerning the act
20 and the evidence concerning the crime charged are inextricably
21 intertwined." United States v. Ramirez-Jiminez, 967 F.2d 1321, 1327
22 (9th Cir. 1992). "In such cases, the policies supporting the
23 exclusion of evidence under Rule 404(b) are inapplicable, since the
24 evidence is not being presented to 'prove the character of a person
25 in order to show action in conformity therewith.'" Id. "Instead,
26 the evidence is 'direct evidence,' used to flesh out the
27 circumstances surrounding the crime with which the defendant has been
28 charged, thereby allowing the jury to make sense of the [evidence] in

1 its proper context." Id. Here, defendant's social media posts,
2 which he made during the period of the charged conspiracy, are not
3 evidence of some other crime, wrong, or act; rather, they are
4 admissions about his motivation to engage in the charged conduct, and
5 are thus exempt from a Rule 404(b) analysis. See id. (finding false
6 statements made during the course of the defendant's arrest were not
7 subject to Rule 404(b) analysis); see also United States v. DeGeorge,
8 380 F.3d 1203, 1220 (9th Cir. 2004) (holding evidence of prior acts
9 are not subject to a Rule 404(b) analysis where the evidence
10 "constitutes a part of the transaction that serves as the basis for
11 the criminal charge"); United States v. Santiago, 46 F.3d 885, 889
12 (9th Cir. 1995) (finding that evidence of gang links to the planning
13 of the crime was not "other crimes" evidence subject to Rule 404(b)
14 where it related directly to the crime for which the defendant was
15 invited and the record "reveal[ed] no evidence of any specific,
16 wrongful acts by either the Mexican Mafia or [the defendant] that are
17 unrelated to the [charged] murder").

18 Even if defendant's social media posts were subject to a 404(b)
19 analysis, they would be admissible under Rule 404(b)(2), which allows
20 the admission of other act evidence which is used to prove motive,
21 opportunity, intent, preparation, plan, knowledge, identity, absence
22 of mistake, or lack of accident. Fed. R. Evid. 404(b)(2). As stated
23 above, the government seeks to admit defendant's posts and messages -
24 - which either directly comment on the charged conduct or else
25 reflect defendant's immersion into and commitment to the white
26 supremacist movement and its violent extremist ideology -- to prove
27 defendant's intention to and motive for rioting and to prove that the
28 physical altercations he engaged in were part of his and RAM's plan.

V. DR. SIMI'S TESTIMONY IS HELPFUL, RELIABLE, AND BASED ON SUFFICIENT FACTS AND DATA

Dr. Simi's testimony is appropriate expert testimony under Rule 702, which allows a witness "who is qualified as an expert by knowledge, skill, experience, training, or education" to testify as an expert. Fed. R. Evid. 702. The expert's knowledge can be "scientific, technical, or other[wise] specialized," and as the Supreme Court has explained, there are "many different kinds of expertise." Fed. R. Evid. 702(a); Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 150 (1999).

Defendant argues that Dr. Simi's testimony should be excluded on three bases. First, defendant claims Dr. Simi's testimony should be excluded because it will not help the jury to understand the evidence or determine a fact at issue. (Mot. at 7.) But as explained above, Dr. Simi's testimony will help the jury to understand the broader white supremacist movement, how white supremacists use violent, public confrontations to advance the agenda of that movement, and whether RAM was or was not a white supremacist group. Those issues are relevant to whether or not RAM's members conspired to riot; that is, to engage in deliberate violence in public settings. Dr. Simi's testimony will also help the jury to interpret defendant's use of language, symbols, and historical references, which shed light on defendant's state of mind and, specifically, whether or not he held beliefs that motivated him to engage in intentional acts of violence. Put simply, defendant's intent is the ultimate issue in this case, and Dr. Simi's testimony will help the jury understand and contextualize his intent. See e.g. United States v. Finley, 301 F.3d 1000, 1013 (9th Cir. 2002) (finding that an expert who would have

1 helped the jury "interpret and assess" their own observations about a
2 defendant's demeanor would have assisted the trier of fact and noting
3 "[o]ur case law recognizes the importance of expert testimony when an
4 issue appears to be within the parameters of a layperson's common
5 sense, but in actuality, is beyond their knowledge.")

6 Second, defendant claims that Dr. Simi's testimony should be
7 excluded because it is not based on sufficient facts and data.
8 Specifically, defendant complains that Dr. Simi has not interviewed
9 defendant or "gathered personalized information." (Mot. at 7.) But
10 the Court should not exclude Dr. Simi's testimony simply because he
11 has not interviewed defendant; Dr. Simi is not, for example, a
12 psychologist attempting to render a diagnosis of a defendant whom he
13 has never treated. Rather, Dr. Simi is an academic researcher who
14 has conducted extensive ethnographic fieldwork and can recognize
15 hallmarks of the white supremacy movement, including phrases, ideas,
16 and symbols that permeate its culture, which he has encountered again
17 and again through his work. It is further immaterial whether Dr.
18 Simi has "gathered personalized information" about defendant (Mot. at
19 7); even if Dr. Simi's testimony were cabined to general information
20 about the white supremacy movement, Dr. Simi's ethnographic fieldwork
21 would be sufficient to support generalized opinions about the white
22 supremacy movement. But it is also inaccurate to say that Dr. Simi
23 has not "gathered personalized information"; to the contrary, as his
24 expert notice reflects, Dr. Simi has reviewed not only extensive
25 materials specific to RAM, but has also reviewed defendant's own
26 messages and posts, which are "personalized information" reflective
27 of defendant's state of mind and beliefs. Accordingly, Dr. Simi's
28 conclusions about defendant are based on sufficient facts and data.

1 To the extent defendant feels that Dr. Simi's lack of personal
2 interaction with defendant limits the value of his testimony,
3 defendant is free to probe that in his cross-examination and argue it
4 to the jury.

5 Third, defendant claims that Dr. Simi's testimony is speculative
6 and unreliable because his opinions are premised on the behavior and
7 characteristics of a "larger group of people" who "lack uniform or
8 clear characteristics." (Mot. at 7.) That claim misconstrues Dr.
9 Simi's proffered opinion, which is that notwithstanding the
10 decentralization of the white supremacy movement, there are core
11 beliefs that unify and permeate its culture. (Dkt. 465-2 at 3-4
12 (noting Dr. Simi's opinion that "there is considerable overlap among
13 the branches of the [white supremacist movement ("WSM")], so
14 distinctions are often blurred"; "[a]ny single group may use symbols
15 or rituals from across different branches"; "spreading across the WSM
16 are its core racist beliefs," and "[e]ven where members belong to
17 different groups or networks, the common culture of the WSM binds
18 leader and members together in an understanding that all sectors will
19 fight together in . . . a coming race war").)

20 Defendant complains that Dr. Simi's opinion is unreliable for
21 the additional reason that it is premised on the behavior of a group
22 that "communicates in an opaque manner." (Mot. at 7.) But as
23 another court in this Circuit has recognized, "[j]ust as an
24 anthropologist might be equipped by education and fieldwork to
25 testify to the cultural mores of a particular social group,
26 [witnesses] may be equipped by experience and training to speak to
27 the operation, symbols, jargon, and internal structure of criminal
28 organizations." United States v. Cervantes, 2016 WL 491599, at *4

1 (N.D. Cal. Feb. 9, 2016) (quoting United States v. Mejia, 545 F.3d
2 179, 190 (2d Cir. 2008)). Similarly, in the context of drug
3 prosecutions, "officers may testify about their interpretations of
4 'commonly used drug jargon' based solely on their training and
5 experience." United States v. Vera, 770 F.3d 1232, 1241 (9th Cir.
6 2014).

7 Here, Dr. Simi can rely on his training and experience,
8 including his decades of research and ethnographic fieldwork, to
9 illuminate for the jury the meaning of the symbols, references, and
10 terminology defendant describes as "opaque." See Cervantes, 2016 WL
11 491599, at *4 (admitting "[o]pinions about the meaning of different
12 symbols associated with gang membership and the general means of
13 communication among gang members" where those opinions "appear to
14 stem from a synthesis of information from [the] officer's training
15 and investigation experience"). Moreover, the coded nature of
16 communications among white supremacists does not render unreliable
17 Dr. Simi's testimony, but rather, underscores the necessity of his
18 testimony in unraveling the meaning behind those opaque
19 communications. See Finley, 301 F.3d at 1013 ("It is precisely
20 because juries are unlikely to know that social scientists and
21 psychologists have identified such a personality disorder . . . that
22 the testimony would have assisted the jury in making its decision.")
23 (internal alterations, quotations, and citation omitted).

24 **VI. THE COURT NEED NOT HOLD A DAUBERT HEARING**

25 Although the district court has a general "gatekeeping" duty to
26 ensure proffered expert testimony "rests on a reliable foundation and
27 is relevant to the task at hand," that obligation does not "require
28 the court to hold a separate Daubert hearing." United States v.

1 Jawara, 474 F.3d 565, 582-83 (9th Cir. 2007). The Court does not
2 need to hold a pretrial hearing to determine whether Dr. Simi is
3 qualified or his testimony is reliable. A court need not hold a
4 hearing where a proposed expert's experience makes plain that he or
5 she is qualified to testify on the subject matter for which he or she
6 is noticed. See e.g., United States v. Alatorre, 222 F.3d 1098, 1105
7 (9th Cir. 2000) (concluding pretrial hearing was not necessary before
8 admission of agent's testimony on the value of marijuana where the
9 agent had twelve years of experience and specialized training and the
10 defendant would have the opportunity to "explore the relevance and
11 reliability of the proposed testimony" at trial); United States v.
12 Quintero, 2022 WL 4021744, at *20-21 (C.D. Cal. Aug. 30, 2022)
13 (finding Daubert hearing was not necessary because the government's
14 proposed expert witness had extensive experience investigating
15 narcotics activity and had testified on substantially similar topics
16 in the past).

17 Here, Dr. Simi has multiple advanced degrees relevant to his
18 proffered testimony, 25 years of experience in academia focused on
19 the subject of white supremacy and extremism, and significant
20 ethnographic fieldwork. He has also testified on substantially
21 similar topics in the past, most notably in Sines v. Kessler, the
22 civil suit arising from the Charlottesville rally charged as part of
23 this case, in which he testified, among other things, about the
24 "double-speak" or "just joking strategies" developed and used by
25 white supremacists to conceal their racist or violent messages. See
26 Sines v. Kessler, No. 3:17-cv-00072 (W.D. Va. Apr. 15, 2021). The
27 Court can and should find that Dr. Simi's testimony is admissible
28 without a Daubert hearing.

1 **VII. CONCLUSION**

2 For the foregoing reasons, the government respectfully requests
3 that this Court deny defendant's motion to exclude evidence from
4 defendant's social media account during the charged conspiracy and
5 deny defendant's motion to exclude Dr. Simi's testimony without
6 holding a Daubert hearing.